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BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
WEB PRESS CORPORATION,

Appellant,

v.

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 86-46

ORDER OF DISMISSAL

On April 16, 1986, respondent filed a Motion to Dismiss the captioned appeal on the grounds that it was not timely filed. The motion was accompanied by the Declaration of Mary A. Kautz. On May 2, 1986, appellant filed a Memorandum in Opposition to Motion to Dismiss, with attached: a) letter of Web Press Corporation, dated March 6, 1986; b) Application for Relief from Penalty No. DE 86-101, dated January 22, 1986; and c) Washington State Register except WSR 85-11-090.

The Board has considered these materials and consulted its file.

I

The following facts are not in dispute and, for the purposes of this motion, are accepted as true:

1. The Department of Ecology (WDOE) issued a regulatory order (Order No. DE 86-109) on January 30, 1986, pursuant to RCW 70.105.095.
2. Web Press Corporation (Web) received this letter on February 3, 1986.
3. Web's letter of March 6, 1986, was received by this Board on March 11, 1986.
4. An Amended Notice of Appeal was filed with this Board on Web's behalf on April 2, 1986.

II

RCW 43.21B.120 and RCW 43.21B.230 provide a thirty day period for appeal of WDOE orders. Unless otherwise provided by law, the thirty days runs from the date that notice of the order is communicated to the appealing party. WAC 371-08-080.

RCW 70.105.095, under which the order in question was issued, does not otherwise provide.

III

In pertinent part RCW 70.105.095 states:

(3) Any order shall become final unless, no later than thirty days after the order is served, the person or persons named in the order request a public hearing . . . [T]he department shall promptly conduct a public hearing to consider testimony and new information regarding the order. The department may, at its discretion, either modify the order or maintain it unchanged. The

1 order shall become effective immediately after the  
2 department reaches a final decision, unless the  
3 department modifies the order to specify another  
4 compliance date.

4 IV

5 We conclude that the word "final" as used in RCW 70.105.095 refers  
6 to the moment at which the issued order goes into force. It is from  
7 this moment that the thirty day period for appeal to this Board begins  
8 to run.

9 The only thing which can disturb the finality of the initial  
10 issuance of an order under RCW 70.105.095 is the filing of a request  
11 for public hearing. If such a request is not timely made, the order,  
12 by operation of law, is deemed to have been "final" upon the date it  
13 originally was served.

14 In the instant case no timely filing of a request for a public  
15 hearing was made. Therefore, the time to appeal to this Board was  
16 within 30 days of February 3, 1986. No appeal was filed within that  
17 period.

18 V

19 Had a request for public hearing been timely filed, we would have  
20 a different case. When an opportunity for "in-house review"  
21 procedures is provided, the appellant must take advantage of it in  
22 order to alter the date at which the time for appeal to this Board  
23 commences. See RCW 70.105.080, 90.48.144.

24 VI

25 Because of the disposition of the respondent's Motion to Dismiss we

26 ORDER OF DISMISSAL  
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1 do not rule on appellant's Motion for Stay.

2 VII


3 The decision reached in this case has no effect on the validity of  
4 Web's appeal of civil penalty in PCHB No. 86-61. The Order  
5 Consolidating Notices of Appeal in PCHB No. 86-46 and PCHB No. 86-61  
6 is hereby rescinded.

7 NOW THEREFORE, based on the foregoing, the Board decides that it  
8 lacks jurisdiction to entertain the instant appeal. Accordingly this  
9 case should be and is hereby dismissed.

10 DONE this 21st day of May, 1986.

11 POLLUTION CONTROL HEARINGS BOARD

12  5/19/86  
13 LAWRENCE J. FAULK, Chairman  
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16 GAYLE ROTHROCK, Vice- Chairman  
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19 WICK DUFFORD, Lawyer Member  
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